



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 201119-0308]

RIN 0648-BI04

Fisheries Off West Coast States; West Coast Salmon Fisheries; Rebuilding Chinook Salmon Stocks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to approve and implement rebuilding plans recommended by the Pacific Fishery Management Council (Council) for two overfished salmon stocks: Klamath River fall-run Chinook salmon (KRFC) and Sacramento River fall-run Chinook salmon (SRFC). NMFS determined in 2018 that these stocks were overfished under the MSA, due to spawning escapement falling below the required level for the three-year period 2015-2017. The MSA requires overfished stocks to be rebuilt, generally within 10 years.

DATES: This final rule is effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206-526-4323.

SUPPLEMENTARY INFORMATION:

Background

In June 2018, NMFS determined that two stocks of Chinook salmon managed under the Council's Pacific Coast Salmon Fishery Management Plan (FMP) met the

overfished criteria of the FMP and the MSA. Overfished is defined in the FMP to be when the three-year geometric mean of a salmon stock's annual spawning escapements falls below the reference point known as the minimum stock size threshold (MSST). The three-year geometric mean of spawning escapement fell below MSST for both KRFC and SRFC salmon stocks for the period 2015-2017. In response to the overfished determination, the Council developed rebuilding plans for these stocks, which were transmitted to NMFS for approval and implementation. NMFS published a proposed rule (85 FR 6135, February 4, 2020) describing the rebuilding plans and soliciting comments from the public on the proposed rule and on the draft environmental assessments (EA) that were prepared under the National Environmental Policy Act (NEPA).

Response to Comments

NMFS published a proposed rule on February 4, 2020 (85 6135) and related draft EAs for public comment. The comment period ended on March 5, 2020. NMFS received four public comment submissions from individuals on the proposed rule and no comments on the draft EA. The comments and responses are below.

Comment 1: One person objected to NOAA's management of salmon stocks and said NOAA failed to protect salmon from exploitation in commercial fisheries.

Response: NOAA's NMFS disagrees that there was a failure to protect salmon from exploitation in commercial fisheries. NMFS is responsible for implementing the MSA to manage the nation's fisheries in a sustainable manner, including rebuilding overfished stocks. NMFS works with the Council to manage West Coast salmon stocks according to conservation objectives and status determination criteria specified in the FMP. It is through these measures that NMFS and the Council recognized the overfished situation for KRFC and SRFC and are managing fisheries to rebuild these stocks consistent with the provisions of the MSA. Annual management measures for ocean salmon fisheries are informed by annual stock abundance projections using the best

available science, including analyses by the Council's Salmon Technical Team and Scientific and Statistical Committee. The management measures apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and to provide fishing opportunity in state waters.

Comment 2: One person wrote to support "replenishing of the fish stocks" and hopes for sustainable populations for the future.

Response: Sustainability is key to NMFS' mission and the cornerstone of the MSA. These rebuilding plans have been prepared to be consistent with the provisions of the MSA, and the Council and NMFS assess salmon stocks annually to assure fisheries are being managed in a sustainable manner.

Comment 3: One person supported the regulation of fisheries and acknowledged that environmental factors which contribute to fish mortality complicate fishery management. This person supports banning or highly regulating fisheries during rebuilding and additional research into salmon mortality from environmental causes and possible solutions.

Response: NMFS does not support banning fisheries in response to the current overfished status of KRFC and SRFC at this time. The Council and NMFS considered a no-fishing alternative. The estimated time to rebuild either of these Chinook salmon stocks under a no-fishing scenario was only one year shorter than under the Council's recommended alternative. The MSA requires the Secretary of Commerce to consider the needs of fishing communities in implementing a rebuilding plan. A no-fishing scenario, for either KRFC or SRFC, would include a total closure of ocean salmon fisheries from Cape Falcon, OR to the U.S./Mexico border, resulting in an estimated loss of \$46 million per year to fishing communities. NMFS can only regulate fisheries in the exclusive

economic zone (3 to 200 nmi—5.6 to 370.4 km—offshore) and does not have regulatory authority over fisheries shoreward of 3 nmi and in-river fisheries; therefore, NMFS does not have the authority to implement a rebuilding plan that would have no fishing-related mortality on the overfished Chinook salmon stocks since in-river freshwater fishing-related mortality would likely continue. Therefore, in consideration of these factors, NMFS is approving the Council's recommendation as the rebuilding plan that will rebuild the stocks in the shortest amount of time while taking into consideration the needs of fishing communities.

Comment 4: One person objected strongly to the use of the term “overfished.” This person called on NMFS to identify lack of coordination among various agencies on water discharge to benefit salmon as the cause of salmon decline.

Response: NMFS understands the concern regarding the term overfished. Under the MSA, a stock or stock complex is considered overfished when its biomass has declined below MSST (50 CFR 600.310(e)(2)(i)(E)), irrespective of the cause of the decline. NMFS supports coordination among agencies to improve salmon productivity. The Council and NMFS considered several possible factors in the decline of the overfished Chinook salmon stocks and, as stated in the proposed rule (85 FR 6135, February 4, 2020), found that the overfished condition was due to: (1) low flows and high water temperatures in the freshwater environment which resulted in low smolt survival for both stocks, disease issues in the Klamath River, and pre-spawn mortality of migrating adults in the Sacramento River; (2) warm, unproductive ocean conditions that compromised survival in the marine environment for both stocks; (3) hatchery practices in the Sacramento River that resulted in straying of migrating salmon which lead to higher than expected in-river fishing mortality for SRFC; and (4) stock assessment errors that resulted in over-forecasting of SRFC and underpredictions of both ocean and in-river fishery mortality rates.

Changes From Proposed Rule

There are no substantive changes made to the regulatory text from the proposed rule, beyond nonsubstantive editorial changes.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the MSA, and other applicable law.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This final rule was developed after meaningful collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 19, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. Add § 660.413 to read as follows:

§ 660.413 Overfished species rebuilding plans.

For each overfished salmon stock with an approved rebuilding plan, annual management measures will be established using the standards in this section, specifically the target date for rebuilding the stock to its maximum sustainable yield (MSY) level (generally expressed as S_{MSY}) and the harvest control rule to be used to rebuild the stock.

(a) *Klamath River Fall-run Chinook Salmon (KRFC)*. KRFC was declared overfished in 2018. The target year for rebuilding the KRFC stock is 2020. The harvest control rule during the rebuilding period for the KRFC stock is the *de minimis* control rule specified in the FMP and at § 660.410(c), which allows for limited fishing impacts when abundance falls below S_{MSY} . The control rule describes maximum allowable exploitation rates at any given level of abundance. The control rule is presented in Figure 1 of subpart H of this part.

(1) The KRFC control rule uses reference points F_{ABC} , $MSST$, S_{MSY} , and two levels of *de minimis* exploitation rates, $F = 0.10$ and $F = 0.25$. The maximum allowable exploitation rate, F , in a given year, depends on the pre-fishery ocean abundance in spawner equivalent units, N . At high abundance, the control rule caps the exploitation rate at F_{ABC} ; at moderate abundance, the control rule specifies an F that results in S_{MSY} spawners; and at low abundance (*i.e.* when expected escapement is below S_{MSY}), the control rule allows for *de minimis* exploitation rates with the abundance breakpoints defined as: $A = MSST / 2$; $B = (MSST + S_{MSY}) / 2$; $C = S_{MSY} / (1 - 0.25)$; $D = S_{MSY} / (1 -$

F_{ABC}), as shown in Figure 1 of subpart H of this part. For N between 0 and A , F increases linearly from 0 at $N = 0$, to 0.10 at $N = A$. For N between A and $MSST$, F is equal to 0.10. For N between $MSST$ and B , F increases linearly from 0.10 at $N = MSST$, to 0.25 at $N = B$. For N between B and C , F is equal to 0.25. For N between C and D , F is the value that results in S_{MSY} spawners. For N greater than D , F is equal to F_{ABC} .

(2) [Reserved]

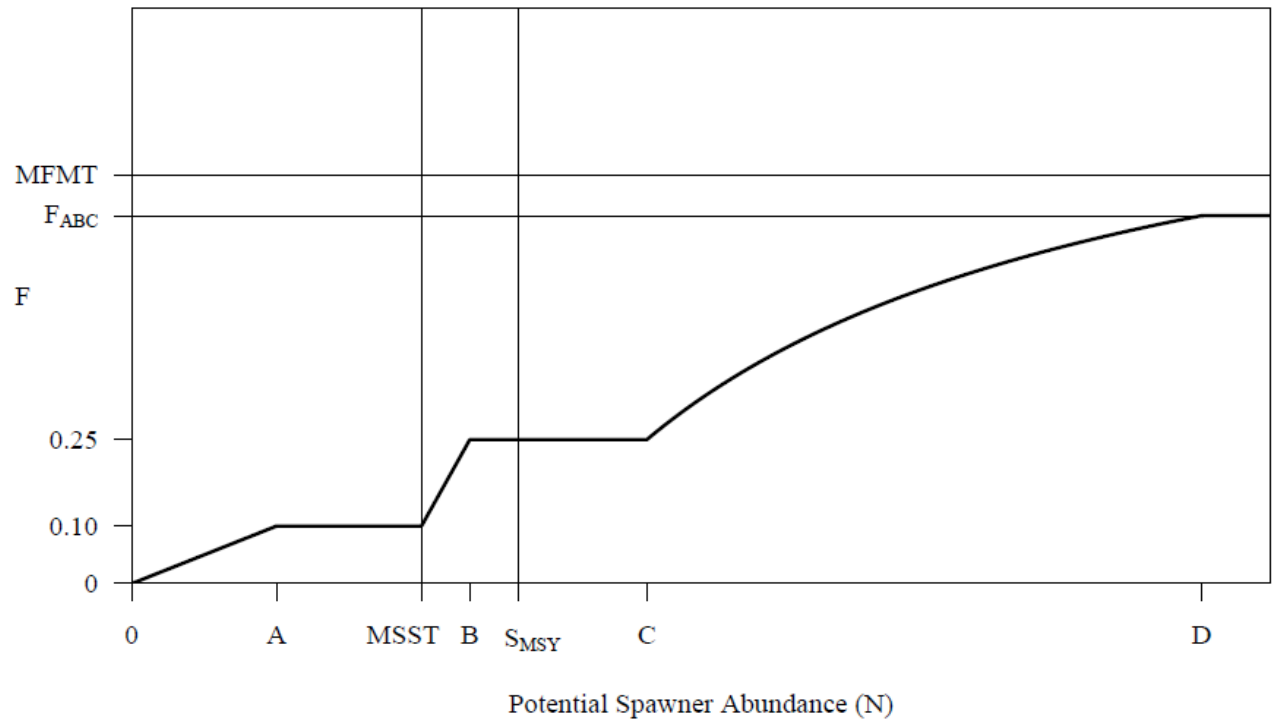
(b) *Sacramento River Fall-run Chinook Salmon (SRFC)*. SRFC was declared overfished in 2018. The target year for rebuilding the SRFC stock is 2021. The harvest control rule during the rebuilding period for the SRFC stock is the *de minimis* control rule specified in the FMP and at § 660.410(c), which allows for limited fishing impacts when abundance falls below S_{MSY} . The control rule describes maximum allowable exploitation rates at any given level of abundance.

(1) The SRFC control rule uses the reference points F_{ABC} , $MSST$, S_{MSY} , and two levels of *de minimis* exploitation rates, $F = 0.10$ and $F = 0.25$. The maximum allowable exploitation rate, F , in a given year, depends on the pre-fishery ocean abundance in spawner equivalent units, N . At high abundance, the control rule caps the exploitation rate at F_{ABC} ; at moderate abundance, the control rule specifies an F that results in S_{MSY} spawners; and at low abundance (*i.e.* when expected escapement is below S_{MSY}), the control rule allows for *de minimis* exploitation rates with the abundance breakpoints defined as: $A = MSST / 2$; $B = (MSST + S_{MSY}) / 2$; $C = S_{MSY} / (1 - 0.25)$; $D = S_{MSY} / (1 - F_{ABC})$, as shown in Figure 1 of subpart H of this part. For N between 0 and A , F increases linearly from 0 at $N = 0$, to 0.10 at $N = A$. For N between A and $MSST$, F is equal to 0.10. For N between $MSST$ and B , F increases linearly from 0.10 at $N = MSST$, to 0.25 at $N = B$. For N between B and C , F is equal to 0.25. For N between C and D , F is the value that results in S_{MSY} spawners. For N greater than D , F is equal to F_{ABC} .

(2) [Reserved]

Figure 1 to § 660.413 – Harvest Control Rule for Klamath River Fall-Run Chinook

Salmon and Sacramento River Fall-Run Chinook Salmon



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